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Appeals Court Says CIA Agent Was Punished Improperly for Violating Secrecy Agreement

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The Fourth U.S. Circuit Court of Appeals ruled yesterday that a lower court improperly punished former Central Intelligence Agency agent Frank Snepp by imposing thousands of dollars of damages on him for violating the agency's secrecy agreement.

However, the court agreed that Snepp breached his secrecy contract by publishing "Decent Interval," his controversial book about the 1975 U.S. evacuation of Vietnam, without prior screening by the CIA.

It also reaffirmed its earlier view that the secrecy agreement—required of all CIA employees—does not violate First Amendment free speech guarantees.

But the court ruled that the sort of damages imposed on Snepp would be proper only if he had disclosed classified information, which the government did not charge.

In light of that, the court said the seizure of all of Snepp's earnings from the book, as a U.S. District Court had ordered, was too severe.

The government now has several options, including going back to District Court and arguing that classified material was disclosed. It also could independently seek punitive damages—a less harsh alternative. This would require a jury trial, the court said, which Snepp was denied by the District Court.

The partial reversal and remanding in the case was confined to the punishment imposed on the former CIA intelligence analyst. Alexandria U. S. District Court Judge Oren Lewis had ordered the confiscation of all of Snepp's earnings from the book—now approaching \$100,000—by imposing a "constructive trust" on the money.

Lewis' action was grounded on the government's contention that Snepp had a relationship of trust with the agency similar to that which a banker has to depositors. By breaching the agreement, Lewis ruled in December 1977, Snepp also had broken this "fiduciary obligation," and, like a banker, had to return his "ill-gotten gain."

Circuit Court Judges Harrison L. Winter and J. Dickson Phillips ruled that Lewis' actions would have been proper had Snepp disclosed classified information. (Judge Walter Hoffman dissented on this point.)

"We do not think, having regard to the defendant's First Amendment right to publish unclassified information that the contract . . . creates any fiduciary relationship to submit writ-

ings for prepublication review," the court said.

The judges said they thought the government was entitled to punitive damages of a more conventional sort and may be "entitled to more" than that.

This would require a jury trial, however, the court said, which Snepp was denied by Lewis in the civil proceeding.

The government's case against Snepp was its second major effort to enforce the CIA secrecy agreement. The same Circuit Court of Appeals upheld the agreement in the case of former CIA official Victor Marchetti. That case involved disclosure of classified information, however, and Snepp's lawyer, American Civil Liberties Union attorney Mark Lynch, argued that the agreement did not apply to disclosures of nonclassified material.

But the court agreed with Lewis that Snepp's violation revolved around the fact that he did not submit his manuscript so the agency could determine if it contained secrets. The question of whether the information was classified thus became irrelevant to the case, the judges ruled.

The court upheld the continuing injunction forbidding Snepp to publish anything further—including fiction—about his CIA experience without prepublication screening.